

ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 92-01200

OCT 09 1998

COUNSEL:

HEARING DESIRED: Yes

APPLICANT REQUESTS THAT:

He be promoted to the grade of lieutenant colonel as of 30 June 1995.

APPLICANT CONTENTS THAT:

He was selected for promotion to the grade of lieutenant colonel by the CY 1981 central lieutenant colonel selection board but resigned to enter the seminary. In order to become a priest, he had no choice but to resign. He then returned to active duty on 21 June 1991 as a chaplain in the grade of major with a date of rank of 28 March 1986.

His previous application to the Board, requesting reinstatement of his line number for promotion by the CY 1981 selection board, was denied. He is not now challenging the dubious logic for the Board's decision. He is providing evidence which will give the Board the rationale to approve his request based on equity.

In the AFMPC/DPMAJ advisory opinion prepared in May 1992, it was noted that, "Although there are no provisions in law to give a recalled officer his line number back, under unique circumstances, (they) may recommend the AFBCMR grant relief." Although unique circumstances did not exist then, they do now. When he returned to active duty, he was placed in the CY 1992 year group for promotion consideration to lieutenant colonel. His placement in this year group for chaplains created paradox. As a chaplain who became a chaplain in the middle of his career, he would not have the number of OPRs career chaplains would have received. His previous period of active duty only had tangential application to the chaplaincy. Unlike other officers with a break in service, his history had no application to his current status. These factors made promotion virtually impossible. When the CY 1992 board met, he only had one OPR as a chaplain in his file. While it was outstanding, it was insufficient to carry the day. When the CY 1994 board met, there were only two more OPRs in the record. While the OPRs were outstanding, he was not selected above the zone. As a result, he was required to separate and was offered early retirement.

Recognizing his significant value, the Air Force sought to have him recalled to active duty after retirement. The policy to not recall twice deferred officers was waived to accomplish this result. Since his recall, his performance has been outstanding. After recall, he could not be considered for promotion.

His devotion to the country, which began as a request from the Chief of Chaplains to him in 1990, has netted no promotions and the distinction of being one of the oldest majors in the Air Force. Based on the unique circumstances of his case, he requests, as a matter of equity, that his records be corrected to show that he was promoted to lieutenant colonel on his last day of active duty before retirement.

In support of his application, he provided a brief by counsel and copies of documents associated with the events cited in his contentions (see Exhibit F).

RESUME OF THE CASE:

On 18 February 1993, the Board considered and denied the applicant's request that his line number for promotion to the grade of lieutenant colonel by the CY 1981 selection board be restored and he be promoted to that grade, effective 21 June 1991 or other appropriate date, and, he be reinstated on active duty. A summary of the evidence considered by the Board and the rationale for the Board's decision is set forth in the Record of Proceedings, dated 14 April 1993, with Exhibits A through E.

STATEMENT OF FACTS:

On 27 January 1965, the applicant was appointed a second lieutenant, Reserve of the Air Force. He was voluntarily ordered to extended active duty in that grade, effective 6 January 1968. He was integrated into the Regular Air Force on 8 January 1970, and was progressively promoted to the permanent grade of captain, with a date of rank of 1 June 1975 and to the temporary grade of major, effective 1 March 1978 and with a date of rank of 5 June 1977. He was selected for promotion to the grade of lieutenant colonel by the CY 1981 Lieutenant Colonel Selection Board with a line number which would have been effective on 1 July 1982. On 17 March 1981, the Secretary of the Air Force accepted his resignation and directed that the applicant be honorably discharged. The applicant was honorably discharged from all appointments on 15 August 1981, having served 13 years, 7 months and 10 days on active duty,

On 16 August 1981, the applicant was appointed a major, Reserve of the Air Force. He was assigned to the Nonaffiliated Reserve Section and from 26 September 1983 to 5 February 1987, to the Inactive Status List Reserve Section.

In the meantime, the applicant was ordained in the Roman Catholic Church on 7 June 1986. On 6 February 1987, he was appointed a Captain (Chaplain) Reserve of the Air Force. Based on allowable service credit, his Total Years Service Date (TYSD) was established as 27 January 1965. An ARPC Form 0-179, Grade Determination Worksheet Service Credit (DOPMA), prepared on 12 March 1987, shows that the applicant was entitled to 11 years and 5 days of creditable prior commissioned service and no credit for experience or education since the allowable credit for appointment grade was less than 7 years per AFR 36-15, Table 2-4, Rule 2. Based on this computation, he was entitled to be appointed a Chaplain in the grade of captain (7 years' minimum service credit required for grade awarded). He was thereafter assigned to a Ready Reserve assignment and was promoted to the Reserve grade of major, effective 1 February 1990. The following is a resume of the Non-EAD Officer Effectiveness/Performance Report (OER/OPR) ratings he received during this period.

<u>PERIOD ENDING</u>	<u>PERFORMANCE RATING</u>
5 Feb 1988 (OER)	1-1-X
30 Nov 1988 (OPR)	Meets Standards (MS)
30 Nov 1990	MS
29 May 1991	MS

pursuant to an invitation issued by the Chief of Chaplains on 27 August 1990, the applicant applied and was accepted for entry on active duty, in the grade of major, effective 21 June 1991. In an AFMPC Form 282, Service Data Computation Worksheet (Corrected copy), prepared on 18 September 1991, the applicant was granted 5 years, 2 months and 23 days of service credit, which was used to backdate his current grade date of rank (CGDOR) as a major upon entry on extended active duty. As a result, a date of rank 28 March 1986 was established.

The following is a resume of his OPR ratings subsequent his entry on extended active duty during this period.

<u>PERIOD ENDING</u>	<u>PERFORMANCE RATING</u>
20 Jun 1992	MS
13 Jun 1993	MS
13 Jun 1994	MS

The applicant was considered and not selected for promotion by the CY 1992 (16 November 1992) and CY 1994 (11 October 1994) lieutenant colonel selection boards. Based on this fact, he was notified that the law required his separation no later than 31 May 1995 and that, as an exception to policy, he was eligible to elect to retire under the Early Retirement Program. Based on his 20 December 1994 application, on 30 June 1995, the applicant was relieved from active duty and retired, effective 1 July 1995. He was credited

with 17 years, 9 months and 17 days of active duty service and 30 years, 5 months and 4 days of service for pay.

In view of a shortage of Catholic Chaplains, upon retirement, the applicant was recalled to active duty under the provisions of 10 USC 688. The Orders which provided for this action indicated that the applicant would revert to retired status on 1 July 1998. This date has since been extended to 30 September 2002. Since his recall to extended active duty, the applicant has received OPRs closing 2 May 1996, 2 May 1997, and 2 May 1998, in which he was rated "Meets Standards."

AIR FORCE EVALUATION:

The Service Verification Section, AFPC/DPPAO, reviewed this application and indicated that the applicant's date of rank as a major at the time he entered extended active duty as a chaplain on 21 June 1991 was computed in accordance with AFI 36-2604 based on his promotion to major in the Air Force Reserve, effective 1 February 1990. He received all applicable credit in the computation of his date of rank when he entered active duty. As a result, he was immediately considered for promotion with other chaplains (see Exhibit G).

The Appeals and SSB Branch, AFPC/DPPPA, reviewed the applicant's amended request and recommended denial of the request for direct promotion to the grade of lieutenant colonel. DPPPA stated that an officer may be qualified for promotion, but, in the judgment of a selection board--vested with the discretionary authority to make the selections--he or she may not be the best qualified of those available for the limited number of promotion vacancies. Absent clear-cut evidence the applicant would have been a selectee by the P0594A board, DPPPA believes a duly constituted board, applying the complete promotion criteria, is in the most advantageous position to render this vital determination. The board's prerogative to do so should not be usurped except under extraordinary circumstances. DPPPA does not agree that unique circumstances exist now that did not exist when he presented his original application. Noting the statement provided by the additional rater of the applicant's 13 June 1993 OPR, DPPPA indicated that that officer does not recommend a direct promotion; rather, he states his support and highest recommendation for promotion consideration by supplemental board action. He does not provide any information to substantiate an error or injustice occurred, or that he now has new information not previously available.

DPPPA reiterated that the applicant voluntarily left the Air Force to pursue another career after having been selected for promotion to lieutenant colonel as a line officer. He forfeited the promotion by his resignation. He later reentered the Air Force in the grade of major and was twice nonselected for promotion to the grade of lieutenant colonel as a chaplain. As a result, he retired

and was subsequently recalled to active duty. The applicant was aware, prior to accepting the Air Force's recall offer, that he would be recalled in the grade of major, with no chance for promotion consideration. DPPPA stated that the applicant's situation is no different from that of other officers who lost line numbers due to voluntary separation because of their desire to pursue other goals and aspirations. DPPPA is of the opinion that it would be unfair to offer the applicant the opportunity of a direct promotion not afforded to other nonselectees who separated from the Air Force in one career field and later accepted a commission in a different career field. Other than **his** own opinions, the applicant has provided nothing to prove his circumstances are unique.

DPPPA stated that they do not question the applicant's devotion to his duties or to the Air Force; however, realistically, promotions are not based solely on faithful service or devotion to duty. Accordingly, they recommend the applicant's request be denied (Exhibit H).

The Staff Judge Advocate, AFPC/JA, also reviewed this application and recommended denial. JA stated that, as noted in the other advisory opinions, the position in which the applicant found himself at the time he most-recently competed for promotion was solely the result of his own actions. JA cannot identify any actions taken by Air Force authorities in this case that were improper or questionable under the circumstances. As to whether or not the "\\unusual circumstances" of this officer having been recalled to active duty due to the shortage of Catholic chaplains, in the context of his not having yet established a fully competitive record for promotion, constitutes an injustice, JA leaves that to the discretion of the Board.

JA indicated that the statutorily-mandated scheme for selecting officers for promotion requires that an officer demonstrate that he or she is among those best qualified for promotion by competing against the other considerees at a properly convened selection board (see 10 USC 628(b) and DoD Directive 1320.11, paragraph D.1., and AFI 36-2501, Chapter 6). In JA's opinion, the applicant has failed to prove that he was among those best qualified for promotion to the grade of lieutenant colonel.

This evaluation is at Exhibit I.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the advisory opinions and reiterated his contentions. He also provided a copy of his most recent OPR closing 2 May 1998. The applicant's submissions are at Exhibit K.

THE BOARD CONCLUDES THAT:

1. As a result of the consideration of the applicant's request for reinstatement of his selection for promotion by the CY 1981 central lieutenant colonel selection board, in February 1993, the Board determined that the applicant's loss of the projected promotion as a line officer was the result of personal choices he made and that the evidence provided was insufficient to show he was the victim of an error or injustice. In addition to his previously-stated contention that he was forced to resign his commission to pursue a vocation, the applicant also asserts that, based on his unique circumstances, i.e., the fact that his records did not contain a sufficiently lengthy history of duty performance when compared to other chaplains being considered for promotion, the immediacy of his consideration upon entry on active duty as a member of the Chaplain Corps, his value to the Air Force, and his devotion to his duties and country, approval of his request is appropriate based on equity. We disagree based on the following rationale.

2. First, we believe it should be noted that there is nothing in the available evidence to indicate the appointment actions taken in this case were improper or that the service computations for appointment/entry grades and dates of rank were erroneous. When the applicant was discharged from the Regular component in 1981, he automatically forfeited his selection for promotion to lieutenant colonel. Based on his application for appointment in the Chaplain Corps, the applicant's service as a Reserve officer was terminated and he was reappointed as a Reserve Chaplain in the grade of captain based on the computation of the service credit to which he was entitled. When he was voluntarily ordered to extended active duty, based on the fact that his permanent Reserve grade was major and in accordance with existing procedures, he was entitled to enter active duty in his Reserve grade. His date of rank on the active duty list was backdated based on yet another computation in which he received allowable service credit for that purpose. Each of the above actions was taken based on a decision made by the applicant. The service computations which resulted from his decisions were separate and apart from those previously made and were based on service credit to which he was entitled for the particular status for which he applied. We have seen no evidence by the applicant which would lead us to believe that the cited service computations were erroneous or contrary to the provisions of the Air Force regulations, instructions and policies, which implement the law. Furthermore, there is no indication that the applicant was treated differently than other officers who resign their commissions to seek appointment and/or entry on extended active duty in a different competitive category.

3. Based on the above, we have no basis to find an error occurred with respect to the determination that the applicant met the eligibility criteria for consideration for promotion as a chaplain to the active duty grade of lieutenant colonel by the CY 1992 selection board. While it may be true that the applicant had one active duty OPR as a chaplain at the time of his initial

consideration for promotion by the CY 1992 selection board, we note that, in addition to the records pertaining to his performance as a line officer, the file contained four reports documenting his duty performance as a Reserve chaplain not on extended active duty. The CY 1994 selection board reviewed two additional active duty reports. In view of the foregoing, we believe the selection boards had adequate information at their disposal on which to make an assessment concerning the applicant's promotability in relation to his peers.

4. Since we have found no error with respect to the actions taken by Air Force authorities in this case, we now turn our attention to the applicant's allegations of injustice. After reviewing the information in the available record and the evidence provided by the applicant, we do not find the evidence sufficient to establish the existence of an injustice. While the applicant may view his circumstances as unfair, there is no indication that the courses of action he elected were based on coercion or that he was treated unfairly in comparison to similarly situated officers. We are not unappreciative of the applicant's devotion to his duties, the Air Force and the Nation. However, we agree with the Air Force analyses of this case and find an insufficient basis to conclude that the applicant's has suffered an injustice so egregious as to warrant the reversal of decisions made by the statutorily constituted selection boards. Accordingly, the applicant's request is not favorably considered.

5. Since we have been able to revolve the issues raised in this appeal based on the written record and no persuasive evidence has been provided showing that a personal appearance with or without counsel will materially add to our understanding of the matters raised in the application, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 1 September 1998 under the provisions of AFI 36-2603:

Mr. Benedict A. Kausal IV, Panel Chair
Mr. Patrick R. Wheeler, Member
Mr. Terry A. Yonkers, Member

The following additional documentary evidence was considered:

- Exhibit F. DD Form 149, dated 8 December 1997, with attachments.
- Exhibit G. Letter, AFPC/DPPAO, dated 11 February 1998, with attachment.
- Exhibit H. Letter, Letter, AFPC/DPPPA, dated 24 February 1998.
- Exhibit I. Letter, AFPC/JA, dated 2 March 1998.
- Exhibit J. Letter, SAF/MIBR, dated 10 March 1998.
- Exhibit K. Counsel's letter, dated 25 June 1998, with attachments and Applicant's Datafax of 2 July 1998.


BENEDICT A. KAUSAL IV
Panel Chair